IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

WP(C).No. 9972 of 2007(K)

PETITIONER:

SREEVENKTESWARA AGENCIES,
T.D.SANNIDHI ROAD, ERNAKULAM, REPRESENTED BY
PARTNER, T.G.RAJARAM SHENOY.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS:

1. **ASSISTANT COMMISSIONER (ASSMT),**
   COMMERCIAL TAXES SPECIAL CIRCLE-II,
   ERNAKULAM.

2. **DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, ERNAKULAM.

3. **INSPECTING ASSISTANT COMMISSIONER,**
   COMMERCIAL TAXES, ERNAKULAM AT KAKKANAD.

4. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY (TAXES),
   GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

BY SR.GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.9972/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ASSESSMENT ORDER DT. 27.5.2002 FOR THE YEAR 1997-98 OF THE 1ST RESPONDENT.

EXT.P2:- COPY OF THE ORDER OF THE 2ND RESPONDENT DT.17.1.03 IN STA- 456/02.

EXT.P3:- COPY OF THE ASSESSMENT ORDER DT.4.2.03 FOR THE YEAR 97-98 (MODIFIED) OF THE 1ST RESPONDENT.

EXT.P4:- COPY OF THE ORDER OF THE SALES TAX APPELLATED TRIBUNAL, ADDL.BENCH-I, ERNAKULAM , DT. 18.2.05 IN TA. NO.302/03.

EXT.P5:- COPY OF THE NOTICE U/S. 17(3) OF KGST ACT, DT.23.11.06 OF THE 1ST RESPONDENT.

EXT.P6:- COPY OF THE REPLY LETTER SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT, DT. 5.12.06.

EXT.P7:- COPY OF THE ORDER DT.22.12.06 FOR THE YEAR 97-98 OF THE 1ST RESPONDENT.

EXT.P8:- COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT, DT.8.2.07.

EXT.P8(a):- COPY OF THE URGENT HEARING PETITION FILED BY THE PETITIONER DT.8.2.07 , BEFORE THE 2ND RESPONDENT.

EXT.P8(b):- COPY OF THE STAY PETITION FILED BY THE PETITIONER DT.8.2.07 BEFORE THE 2ND RESPONDENT.

EXT.P9:- COPY OF THE DEMAND NOTICE IN FORM-I, DT.20.3.07 ISSUED BY THE 3RD RESPONDENT.

EXT.P10:- COPY OF THE ORDER NO.IA. 38/07 IN STA NO.203/07 DT.23.2.07 OF THE 2ND RESPONDENT.

EXT.P11:- COPY OF THE LETTER SUBMITTED BY THE PETITIONER DT.22.2.07 BEFORE THE 1ST RESPONDENT.

/TRUE COPY/

tss

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 9972 OF 2007-K

JUDGMENT

The petitioner attacks Ext.P10 order passed on the stay application filed by it along with STA No.203/2007, a copy of which is produced as Ext.P8. It points out that the original assessment for the year 1997-98 was completed as per Ext.P1 order. The said assessment order was modified by the first appellate authority by Ext.P2 order and Ext.P3 revised assessment order was issued. The petitioner paid the entire amount due under Ext.P3. Later, Ext.P2 first appellate order was challenged before the Tribunal. The Tribunal remanded the matter for fresh disposal in accordance with law. Taking the said remand as an open remand, the original assessment has been modified to the detriment of the petitioner. Hence Ext.P8 appeal. The petitioner submits, absolute stay should have been granted. The revenue did not file any appeal against Ext.P2, nor was there any suo motu revision. So, the revision of the assessment to the detriment of the petitioner, by claiming further amounts from it towards sales tax is unsustainable, it is submitted. Therefore, the petitioner prays for absolute stay.

2. I heard the learned Government Pleader for the respondents also. I

find considerable force in the submission of the petitioner. It has been placed in a worst position for having chosen to challenge Ext.P2 in appeal. So, Ext.P10 is modified. Absolute stay is granted, on condition the petitioner furnishes security for the entire amount due from it towards tax for the year 1997-98.

The writ petition is disposed of as above.

23rd March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/